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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Assessment and Collection) MD Docket No. 98-36
of Regulatory Fees for)
Fiscal Year 1998)

To: The Commission

COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned docket, FCC 98-40, released March 25, 1998 ("Notice"). GE Americom opposes the Commission's proposal to increase the annual regulatory fee for geostationary space stations from \$97,975 to \$119,000 per spacecraft. Notice at Attachment E. The fee level proposed is unjustified because it does not accurately reflect the actual costs of regulation of licensed U.S. space stations.

BACKGROUND

In our previous filings regarding regulatory fees, GE Americom has shown that the regulatory burden placed on the Commission with respect to

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licensed satellites is limited.¹ The Commission has substantially deregulated satellite services, and most are offered on a noncommon carrier basis, eliminating the need for tariffs or related enforcement activities under Title II of the Communications Act. The substantial application fees for spacecraft recover the costs of initial authorization and coordination of satellites. Once an application is granted, almost no Commission regulatory oversight is required during the ten-year license term of a satellite. *See* 1995 Comments at 5-11; 1996 Comments at 1-2; 1997 Comments at 1-2.

Similarly, most rulemaking proceedings in the satellite field do not address the regulation of in-orbit spacecraft. Instead, Commission efforts in this area relate primarily to the development of satellite services using new frequency bands. For example, the Commission incurred substantial costs in developing a band plan to permit satellite operations in the Ka-band, and is currently working on a plan for the Q/V-band. These costs cannot appropriately be recovered in the regulatory fees paid by C- & Ku-band satellite operators.

GE Americom has supported the development of an accounting system to estimate the costs associated with regulatory activities undertaken for licensees.

¹ *See, e.g.*, Comments of GE American Communications, Inc., MD Dkt. No. 95-3 (Feb. 14, 1995) (hereinafter, "1995 Comments"); Comments of GE American Communications, Inc., MD Dkt. No. 96-84 (Apr. 29, 1996) (hereinafter, "1996 Comments"); Comments of GE American Communications, Inc., MD Dkt. No. 96-186 (Mar. 25, 1997) (hereinafter, "1997 Comments").

However, we have emphasized that any such system must accurately identify costs related to activities intended to be covered by regulatory fee payments. 1995 Comments at 14-16. For example, the system must distinguish between costs related to application processing and those related to ongoing regulation of licensees. Similarly, the system must differentiate between costs due to existing services and costs undertaken to support the development of new services.

DISCUSSION

The accounting system the Commission has implemented clearly does not meet the requirements discussed above. The cost amount identified for regulatory activities for satellites -- over \$6 million -- bears no logical relationship to the scope of the Commission's regulatory responsibilities with respect to in-orbit geostationary spacecraft. The Commission has not satisfactorily explained how the cost information was derived. In particular, the Commission has not demonstrated that it has ensured that costs related to the development of new satellite services have been excluded from the cost base for existing geostationary spacecraft.

Because of these flaws, the Commission's proposed increased regulatory fee for geostationary satellites cannot be reconciled with the applicable statutory requirements. Congress has made clear that regulatory fee amounts must be "reasonably related to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. § 159(b)(1)(A). The proposed fee for geostationary satellites does not meet this requirement, because the Commission

has not shown the nexus between the fee amount and the benefits that current space station operators receive from Commission regulatory activities covered by the fee.

GE Americom recognizes that the Commission is required by Congress to set regulatory fees in order to achieve a specified total revenue amount. Thus, a portion of the increase in fees applicable to space stations each year is due to the increase in the amount Congress requires the Commission to collect. Notice at ¶ 2. In fact, the amount designated by Congress for collection in Fiscal Year 1998 exceeds the Commission's own calculation of total regulatory costs for the past year. Id. at Attachment D.

The Commission, however, has an obligation to ensure that the amount it collects is distributed fairly among fee categories. Costs that relate to the development of new services rather than to existing operations should be treated as overhead and recovered proportionally from all fee payors. The Commission cannot justify imposing the full costs for the development of new satellite services on existing satellite operators. The effect of such an allocation is to require satellite operators to subsidize their future competitors.

The level of regulatory fees imposed on geostationary space station operators directly affects their ability to keep costs down for end users. In addition, the fees impair the ability of U.S. licensees to compete with foreign-licensed carriers. The Commission accordingly has an obligation to ensure the accuracy of the data that is used as the basis for fee calculation.

CONCLUSION

The Commission has not justified the cost estimate it relies on in support of the proposed fee for geostationary space stations for Fiscal Year 1998. The fee should be decreased substantially to a level that is commensurate with the limited regulatory activities required in connection with in-orbit satellites.

Respectfully submitted,

GE AMERICAN COMMUNICATIONS, INC.

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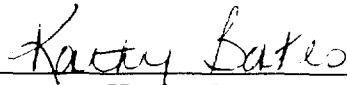
April 22, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of GE American Communications Inc. were served by hand delivery this 22nd day of April, 1998 to:

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